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Attorneys for Plaintiff FINISAR CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FINISAR CORPORATION, a Delaware
corporation,

Plaintiff,

v.

U.S. BANK TRUST NATIONAL
ASSOCIATION, a national banking
association, not in its individual capacity,
but solely in its capacity as Indenture
Trustee in behalf of all Holders of Finisar
Corporation's 5¼% Convertible
Subordinated Notes due 2008, 2½%
Convertible Senior Subordinated Notes due
2010, and 2½% Convertible Subordinated
Notes due 2010; and DOES 1 through 10,
inclusive,

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. 5:07-CV-04052-JF (PVT)

**DECLARATION OF STERLING A.
BRENNAN IN SUPPORT OF
PLAINTIFF FINISAR CORPORATION'S
MOTION FOR ATTORNEY'S FEES**

Date: **Friday, November 7, 2008**
Time: **9:00 a.m.**
Courtroom: **3**

District Judge: Hon. Jeremy Fogel
Magistrate Judge: Hon. Patricia V. Trumbull

Complaint Filed: June 22, 2007
Summary Judgment: August 25, 2008

1 I, Sterling A. Brennan, declare and state:

2 1. I am a member of the State Bars of California and Utah, admitted to practice
3 before the above-entitled Court, a senior shareholder of the law firm Workman Nydegger, and
4 one of the attorneys of record representing plaintiff and counterdefendant Finisar Corporation
5 (“Finisar”) in the above-captioned action (the “Action”). I make this declaration based upon my
6 own personal knowledge and records maintained by Workman Nydegger, to which I have access
7 in the course of fulfilling my duties for Workman Nydegger and its clients (including Finisar), in
8 the ordinary course of business.

9 2. In accordance with Civil L.R. 54-6(a), counsel for Finisar telephonically met and
10 conferred with counsel for defendant and counterclaimant U.S. Bank Trust National Association
11 (“U.S. Bank”) in order to attempt resolution of disputes connected with the attorney’s fee request
12 made by Finisar in its accompanying Motion for Attorney’s Fees (the “Motion”), but without
13 success.

14 3. I have served as Finisar’s lead counsel in this Action since its inception. I have
15 been assisted in my representation of Finisar in the Action primarily by L. Rex Sears, another
16 shareholder of Workman Nydegger; Carolyn McIntyre, the managing partner of the law firm
17 Bergeson, LLP; and Shellie C. Courdy and Jessica D. Garcia, paralegals employed by Workman
18 Nydegger. Mr. Sears has assisted primarily with brief-writing and associated research and
19 analysis, as well as by managing discovery; Ms. McIntyre has served as local counsel; and the
20 paralegals have provided support for me and the other attorneys. In addition, Amber B. Leavitt,
21 an associate employed by Workman Nydegger, has assisted with various research tasks.

22 4. Additional information regarding my background and qualifications is set forth in
23 the printout from Workman Nydegger’s website attached as Exhibit “A” hereto. During the
24 course of my representation of Finisar in connection with this Action, my billing rate has ranged
25 from \$425 to \$470 per hour. I believe my rate is and has been substantially lower than those of
26 other attorneys with comparable qualifications in the San Jose area.

27 5. Mr. Sears was awarded his J.D. by The University of Chicago Law School and
28 admitted to the Utah State Bar in 1999, began working as an associate at Workman Nydegger in

1 2000, and has been a shareholder of Workman Nydegger since 2004. Additional information
2 regarding Mr. Sears' background and qualifications is set forth in the printout from Workman
3 Nydegger's website attached as Exhibit "B" hereto. During the course of Workman Nydegger's
4 representation of Finisar in connection with this Action, his billing rate has ranged from \$270 to
5 \$295 per hour. I believe his rate is and has been substantially lower than those of other attorneys
6 with comparable qualifications in the San Jose area.

7 6. Ms. Leavitt was awarded her J.D. by Pepperdine University and admitted to the
8 State Bar of California in 2006, since which time she has been employed as an associate by
9 Workman Nydegger. During the course of Workman Nydegger's representation of Finisar in
10 connection with this Action, Ms. Leavitt's billing rates have ranged from \$170 to \$195 per hour.
11 I believe her rate is and has been substantially lower than those of other attorneys with
12 comparable qualifications in the San Jose area.

13 7. Ms. McIntyre was awarded her J.D. by the University of Notre Dame in 1991 and
14 admitted to the State Bar of California in 1992. Additional information regarding Ms. McIntyre's
15 background and qualifications is set forth in the printout from Bergeson's website attached as
16 Exhibit "C" hereto. During the course of Bergeson's representation of Finisar in connection with
17 this Action, her billing rate has ranged from \$475 to \$480 per hour. I believe her rate is and has
18 been comparable to those of other attorneys with comparable qualifications in the San Jose area.

19 8. During the course of Workman Nydegger's representation of Finisar in connection
20 with this Action, Ms. Courdy's billing rate has ranged from \$115 to \$120 per hour and Ms.
21 Garcia's has ranged from \$130 to \$135 per hour. I believe their rates are and have been
22 substantially lower than those of other paralegals with comparable qualifications in the San Jose
23 area.

24 9. The following table summarizes, by timekeeper, the number of hours for which
25 Finisar has been billed for work performed in connection with the Action, and the amount billed:
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27
28

Timekeeper	No. of Hours	Amount
Sterling A. Brennan	661	\$298,010.00
L. Rex Sears	719.85	\$206,657.00
Amber B. Leavitt	17.5	\$3,187.50
Caroline McIntyre	17.20	\$8,192.50
Shellie C. Courdy	164.45	\$19,684.25
Jessica D. Garcia	48.5	\$6,326.50
	Total:	\$542,057.75

10. The following table summarizes, by timekeeper, the number of hours of work that has been performed for Finisar in connection with the Action but for which Finisar has not yet been billed, through August 31, 2008, and the anticipated amount Finisar will be billed:

Timekeeper	No. of Hours	Amount
Sterling A. Brennan	27.25	\$12,807.50
L. Rex Sears	11.25	\$3,318.75
Shellie C. Courdy	19.5	\$2,340.00
	Total:	\$18,446.25

11. Attached as Exhibit "D" hereto is a true and correct copy of correspondence I received by email from counsel for U.S. Bank on the afternoon of Wednesday, September 3, 2008.

12. Attached as Exhibit "E" hereto are true and correct copies of portions of the transcript of the March 26, 2008 deposition of Diana L. Jacobs in the Action.

13. Attached as Exhibit "F" hereto are true and correct copies of exhibits authenticated by Ms. Jacobs during her March 26, 2008 deposition in the Action.

14. In correspondence and discussions with counsel for U.S. Bank in the Action, as well as through deposition discovery, I have been advised that primary responsibility for the administration of the indentures at issue in the Action was assumed by Diana L. Jacobs, a vice president of U.S. Bank working in Seattle, Washington, in or about March of 2007; and that communications with U.S. Bank pertaining to the Indentures should be directed to her attention and sent to her Seattle office.

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: D. Anthony Rodriguez, drodriguez@mofo.com; Abby E. Wilkinson, awilkinson@faegre.com; Eva K. Schueller, eschueller@mofo.com; Michael B. Fisco, mfisco@faegre.com; Edward T. Wahl, ewahl@faegre.com and Paul T. Friedman, pfriedman@mofo.com.

WORKMAN NYDEGGER

/s/ Sterling A. Brennan

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